

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re:

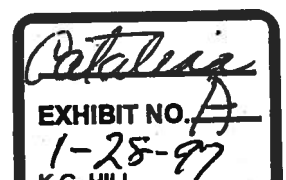
CATALINA YACHTS, INC.,

Respondent.

Docket No. EPCRA-09-94-0015

SUBMISSION OF VERIFIED
STATEMENT IN LIEU
OF ORAL TESTIMONY

COMES NOW THE COMPLAINANT by its counsel of record, David M. Jones pursuant to the oral order of the Presiding Administrative Law Judge made by telephone conference call with the representatives of the parties in the above-entitled matter on January 22, 1997, granting Complainant leave to submit a verified statement as provided in Section 22.22⁶ of the Consolidated Rules of Practice in lieu of oral testimony of the witnesses to be called by Complainant at the hearing in the above-entitled matter now scheduled to take place before Your Honor in San Francisco, CA on January 28, 1997. Pursuant to the Presiding Administrative Law Judge's order a copy of the verified statements was sent to Respondent's counsel by facsimile on January 22, 1997. The verified statements of the following witnesses are hereby



submitted for inclusion in the record of the proceeding:

Pi-Yun "Pam" Tsai, Environmental Protection Specialist,
Region 9

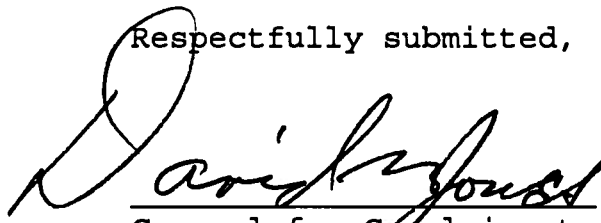
Gregory A. Gholson, Environmental Protection
Specialist, Region 9

Amy C. Miller, Environmental Protection Specialist,
Region 9.

Counsel for Complainant will present to the reporter for inclusion in the record of the hearing, a copy of each verified statement. The witnesses whose verified statements are hereby submitted will be present at the hearing and may be called by opposing counsel for cross-examination. Complainant reserves the right to adduce oral testimony from any witness called for cross-examination on any material aspect of the action.

Dated: January 23, 1997.

Respectfully submitted,


Counsel for Complainant

Attached:

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the foregoing Submission of Verified Statements in Lieu of Oral Testimony was filed with the Regional Hearing Clerk, Region 9 and that a copy was sent by First Class Mail to:

Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law Judges
United States Environmental Protection Agency
401 M Street, Room 3706 (1900)
Washington, D. C. 20460

and to:

Robert D. Wyatt, Esquire
Eileen M. Nottoli, Esquire
BEVERIDGE & DIAMOND
One Sansome Street, Suite 3400
San Francisco, California 94105

1/23/97
Date

Laura J. Michael
Office of Regional Counsel
U. S. Environmental Protection
Agency, Region 9

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re:

CATALINA YACHTS, INC.

Docket No. EPCRA-09-94-0015

Respondent.

DECLARATION

I, Pi-Yun "Pam" Tsai hereby declare:

1. I am employed as an Environmental Protection Specialist in the Air Division at the U. S. Environmental Protection Agency ("EPA"), Region 9, and have personal knowledge of the facts set forth in this Affidavit.

2. I hold a Doctor of Science degree in Nutrition from the School of Public Health, Harvard University, Boston, Massachusetts. I am a diplomat of the American Board of Toxicology. My other qualifications which may be considered by the Presiding Administrative Law Judge in finding me eligible to testify as an expert in toxicology and able to give opinions on

the potential risk presented by acetone and styrene, are set forth in a document which is incorporated herein by reference, attached hereto and marked as Exhibit No. 1.

3. My initial employment at EPA was from January 1981, to October 1986, at Region 1 in Boston, MA, as an Environmental Scientist. From October 1986 to August 1989, I was employed in Region 1 as a Toxicologist.

4. As the Regional Toxicologist at Region 1, I summarized and documented relevant toxicological information regarding toxicants and their potential adverse health effects in response to inquiries from the states in Region 1, Regional staff members, the media and the general public. I interpreted EPA regulations and guidelines from a toxicological point of view for the benefit of Regional staff personnel and the general public. I reviewed risk assessment reports and remedial investigation and feasibility studies. I assisted personnel in the Region's Waste Management and Water Programs by providing comments and guidance, written and oral, on issues related to risk assessment, toxicology, cleanup goals and remedial alternatives. During the course of my employment at Region 1, I served as an expert witness in a Federal District Court trial regarding the setting of clean-up levels at a hazardous waste site.

5. My employment at EPA, Region 9, began in January 1993. From January 1993 through January 1996 I was employed as the Program Manager in the Toxic Release Inventory Program. As Program Manager in the Toxic Release Inventory ("TRI") Program, I reviewed the work product prepared by TRI Program personnel and directed them in the development of administrative enforcement actions. In addition, I was a Case Development Officer and a field inspector.

6. I first became aware of Respondent as a result of reviewing an Inspection Report which documented an inspection at Respondent's facility located in Woodland Hills, CA, conducted by Bill Deviny, TRI Program Specialist, Region 9 on November 15, 1993. As a general practice, I relied on the facts set forth in the inspection reports to determine compliance by the regulated community with Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA").

7. At the time of the inspection, Mr. Deviny worked under my guidance in the TRI Program at Region 9, EPA. A copy of the Inspection Report submitted by Mr. Deviny is incorporated herein by reference, attached hereto and marked as Exhibit No. 2.

8. The Inspection Report led me to check the TRI System (TRIS) for reporting facilities in Woodland Hills, CA. TRIS is a

database maintained by EPA which is accessible by computer. Some of the information available through TRIS is information with respect to the identity of facilities submitting Form Rs to EPA and the chemical release data included therein. I learned from TRIS that Respondent's facility in Woodland Hills, CA, had failed to submit Form Rs for acetone for the years 1988 and 1989. TRIS showed that Respondent's facility had failed to submit Form Rs for styrene for the years 1988 through 1992. These failures to file the Form Rs for the years and chemicals became the basis for the charges in the Complaint and Notice of Opportunity for Hearing ("Complaint") filed with the Regional Hearing Clerk, Region 9.

9. I made the initial draft of the Complaint which was submitted to the Office of Regional Counsel for legal review. I also calculated the proposed civil penalty using the Enforcement Response Policy for Section 313 of EPCRA dated August 10, 1992 ("ERP"). A copy of the Penalty Calculation Worksheet is incorporated herein by reference, attached hereto and marked as Exhibit No. 3.

10. The extent level for each violation charged in the Complaint was determined, based on the amount of Section 313 chemical involved in the violation and the size of Respondent's

business, to be extent level "A." The data regarding annual gross sales for Respondent was taken from the EPCRA Targeting System, Facility Detail Report dated November 10, 1993. The circumstance level for each violation charged in the Complaint was determined, based on the ERP guidance, to be circumstance level "1," failure to report in a timely manner.

8. In my calculation of the proposed civil penalty, I considered the adjustment factors that are available under the ERP which are based on Respondent's voluntary disclosure, history of prior violations, delisting of chemicals manufactured, processed or otherwise used by Respondent, Respondent's attitude and adjustments that come within the ERP adjustment for "Other factors as justice may require."

9. I determined that none of the ERP adjustments were applicable to the charges in the Complaint. The adjustment for attitude and "Other factors as justice may require" is, by practice in Region 9, considered only in connection with settlement negotiations.

10. The Standard Industrial Classification ("SIC") Code for Respondent's Woodland Hills, CA facility, 3732- Boat and Boat Building, was determined by the inspector prior to the inspection through use of the EPCRA Targeting System, an EPA database. As a

matter of practice, the SIC Code is confirmed at the time of the inspection. The number of employees at the Woodland Hills facility was taken from the EPCRA Targeting System, Facility Detail Report dated November 10, 1993, and confirmed by the Inspection Report. A copy of the EPCRA Targeting System, Facility Detail Report dated November 10, 1993, is incorporated herein by reference, attached hereto and marked as Exhibit No. 4.

11. The Complaint was filed with the Regional Hearing Clerk on June 20, 1994, and Respondent's Answer was filed July 14, 1994. Complainant's Motion for Accelerated Decision was filed on October 4, 1994. The Presiding Administrative Law Judge's ruling on the motion dated January 10, 1995, granted Complainant's motion as to liability.

12. Subsequent to filing the Complaint, it came to my attention that Respondent owned and operated a facility which is known as the Morgan Division in the State of Florida. EPCRA and the implementing regulations at 40 C.F.R. Part 372, require each facility, as that term is defined in Section 329 of EPCRA, owned and operated by Respondent, which meets the reporting requirements, to file a Form R. A certified statement was obtained from EPA Headquarters which shows that Respondent's Morgan Division filed Form Rs for acetone for the years 1989

through 1991 and for styrene for the years 1989 through 1994. A copy of the certified statement obtained from EPA Headquarters is incorporated herein by reference, attached hereto and marked as Exhibit No. 5.

13. At the time of the inspection, acetone and styrene were listed at 40 C.F.R. § 372.65. Both acetone and styrene monomer are flammable and present a fire hazard. In addition, styrene is a very reactive compound that has explosion hazard. Acetone and styrene have distinct odor and can cause irritation to eyes, nose, throat, and the respiratory system. Exposure to acetone and styrene has potential to cause damages in kidneys, liver, and nervous system. Styrene is considered a possible human carcinogen.

14. Respondent has filed with EPA and the State of California Form Rs for the chemicals and years identified as delinquent in the Complaint.

15. Information from Respondent's Form Rs which were submitted in 1994, show that in 1988 alone, Respondent's facility in Woodland Hills, CA released approximately 220,000 pounds of acetone and 200,000 pounds of styrene to the air. Based on the information I received from, and the conversations I had with a staff member at the Los Angeles Fire Department, Respondent's

facility in Woodland Hills, CA had four fire incidents which occurred between June 1988 and November 1988. "Spontaneous ignition" due to chemical reaction was listed as the form of heat ignition for two of these four fire incidents.

16. The Form R which Respondent was required by EPCRA to file regarding the Facility is used to report to EPA and the State, on an annual basis, the quantity of an EPCRA listed chemical that was released to all environmental media, i.e., air, land and water by the reporting facility. The Form R is also used to show the maximum amount of a given EPCRA listed chemical on site at the reporting facility at any point in time during the reporting year. The filing of the Form Rs permits public access to centralized information at a reasonably localized level. The information submitted can be used by the public to identify facilities and chemical release patterns that warrant further study and analysis. Respondent's failure to timely complete and submit the Form Rs as required, has prevented the Federal, State and local governments, as well as the people of the communities surrounding the Respondent's Woodland Hills facility, from knowing of the toxic chemicals used and released from Respondent's facility.

17. The first reporting year under EPCRA was for 1987, and

the Form Rs were due by July 1, 1988. EPA notified the regulated public through the rule making process of the obligation to file the Form Rs. In addition, EPA and Region 9 conducted extensive outreach workshops which were intended to inform the regulated public of their obligations under EPCRA. Region 9 conducted numerous workshops in Southern California. Various databases were used by EPA and the Region to notify members of the regulated public of the availability of the workshops. Respondent was listed on at least two of the databases used to notify the regulated public regarding the workshop schedules.

19. The proposed rule delisting acetone was published in September 1994. The final rule was published in June 1995.

FURTHER DEPONENT SAYETH NOT

Executed this 22nd day of January, 1997.

I declare under the penalty of perjury that the foregoing is true and correct.*

Pi-Yun Tsai

PI-YUN TSAI

Environmental Protection Specialist
U. S. Environmental Protection Agency
Region 9

*Authorized under 28 U.S.C. § 1746.

List of Exhibits

Exhibit No. 1 - :Publications and Presentations - Pi-Yun Tsai

Exhibit No. 2 - Inspection Report

Exhibit No. 3 - Penalty Calculation Worksheet

Exhibit No. 4 - EPCRA Targeting System, Facility Detail Report dated November 10, 1993

Exhibit No. 5 - Certified Statement -- Morgan Division

PUBLICATIONS AND PRESENTATIONS

Tsai, P.Y. 1991. Risk assessment of dietary exposure to oxydemeton-methyl. California Department of Food and Agriculture, Sacramento, California (Draft Internal Document).

Tsai, P.Y. 1991. Revised risk characterization document for molinate. California Department of Food and Agriculture, Sacramento, California (Draft Internal Document).

Tsai, P.Y. 1991. Risk characterization document for cycloate. California Department of Food and Agriculture, Sacramento, California (Draft Internal Document).

Tsai, P.Y. 1991. Risk assessment of dietary exposure to metalaxyl - Section 3 Registration. California Department of Food and Agriculture, Sacramento, California (Draft Internal Document).

Tsai, P.Y. 1990. Risk characterization document for flutolanil - Experimental Use Permit. California Department of Food and Agriculture, Sacramento, California (Draft Internal Document).

✓ Tsai, P.Y., and C. Lewis. 1990. Risk characterization document for 1,3-dichloropropene. California Department of Food and Agriculture, Sacramento, California (Internal Document).

✓ Tsai, P.Y. 1990. Interim risk characterization document for molinate. California Department of Food and Agriculture, Sacramento, California.

✓ Tsai, P.Y., and R.P. Geyer. 1978. Stimulating effect of hydrocortisone on the catabolism of endogenous fatty acyl groups by fatty acid supplemented mouse L fibroblasts. *J. Biol. Chem.* 253:5087.

✓ Tsai, P.Y., and R.P. Geyer. 1978. Effect of exogenous fatty acids on the retention of phospholipid acyl groups by mouse L fibroblasts. *Biochim. Biophys. Acta* 528, 344.

✓ Tsai, P.Y., and R.P. Geyer. 1977. Fatty acid synthesis and metabolism of phospholipid acyl groups in strain L mouse fibroblasts. *Biochim. Biophys. Acta*, 489, 381.

Chen, P.Y., H.A. Dymaza, and S.M. Constantinides. 1970. Extending fish preservation time with additives and processing. Annual Northeast Regional American Chemical Society Meeting - Agriculture and Chemistry (Abstract).

✓ Chen, P.Y., and Y.C. Huang. 1969. Seasonal Changes of Total Pectin Contents and Pectinesterase Activities in the Various Components of Tankan Fruits. M.S. Thesis, National Taiwan University. Taipei, Taiwan.



EPA

U. S. Environmental Protection Agency

REGION IX

SAN FRANCISCO, CA

Emergency Planning and Community Right-to-Know

Act of 1986 (SARA Title III)

INSPECTION REPORT

1. INSPECTOR'S IDENTIFICATION				2. FACILITY NAME	
DATE	INSPECTORS NO.	DAILY SEQ. NO.	TIME		
11/15/93	EP-IX-003	4	13:45	Catalina Yachts, Inc.	
3) SIC CODE 3732 NUMBER OF EMPLOYEES 225 INSPECTION NOTIFICATION DATE Unannounced				4) FACILITY ADDRESS 21200 Victory Blvd. Woodland Hills CA 91365	
5) DATE PREPARED 5/26/94				Revised 6/1/94	

This company was selected by the EPCRA Targeting System (ETS). In preparation for an inspection trip to the Los Angeles area in mid-November of 1993, the ETS was requested to list all the companies in ZIP code areas 91300 to 91399 with 50 or more employees.

This company was selected because the listed SIC code was 3732 - Boat and boat building, and it was right around the corner from another company that I planned to inspect.

On November 15, 1993, I met with Mr. Gerald B. Douglas, the Vice President. He said the facility manufactures sail boats from about 12 to 42 feet. These are all fiberglass reenforced plastic. He had not heard of this part of EPCRA but would check and get back to me.

At a later visit, on May 19, 1994, to the plant, Mr. Douglas and I went over the usages of Acetone and Styrene. Acetone was used for cleaning equipment etc. and is therefore considered "Otherwise Used". The Styrene polymerizes with the ester in the resin and form the hard plastic hull and deck, it is therefore considered "Processed".

In the letter of April 27, they listed the emissions rather than the usages. During the May 19th visit, Mr. Douglas and Mr. Wright, (who was on called on the phone), explained that the Acetone emissions were actually equal to the number of pounds used. The number of pounds of emissions for Styrene were actual emissions based on factors supplied by the resin manufacturers.

INSPECTORS SIGNATURE

DATE SIGNED

6/1/94

PAGE 1
OF 2

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U. S. Environmental Protection Agency

REGION IX

SAN FRANCISCO, CA

Emergency Planning and Community Right-to-Know

Act of 1986 (SARA Title III)

INSPECTION REPORT

1. INSPECTOR'S IDENTIFICATION				2. FACILITY NAME	
DATE 11/15/93	INSPECTOR'S NO. EP-IX-003	DAILY SEC. NO.	TIME 13:45	Catalina Yachts, Inc.	

Mr. Wright said he would supply me with the usage figures for styrene as soon as possible.

On May 24, he wrote a letter, which he FAXED to us the next day, where he listed the amount of resin used, not the amount of styrene used. In a telephone call on May 27, 1994, Mr. Wright said that Catalina Yacht used four different types of resin over the years, these contained between 20 and 62 % styrene. He thought that using the average of 41 % would be a good estimate. For the gel-coat, this usually contains between 40 and 50 % styrene, so the average would be 45 %, which he thought would be a good number to use.

Based on the information transmitted above, the following table was constructed.

Year	Acetone Usage*	Resin Usage*	Gel-coat Usage*	Styrene usage*
1987	560,727	2,774,079	625,104	1,418,668
1988	308,168	3,611,326	674,302	1,784,078
1989	101,655	3,215,000	318,219	2,691,348
1990	1,089	2,008,308	166,690	898,416
1991	323	1,296,706	206,206	624,441
1992	1,802	1,373,477	217,052	660,798

* All usages are in pounds per calendar year.

INSPECTOR'S SIGNATURE

[Handwritten Signature]

DATE SIGNED

6/1/94

PAGE
OF

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EPCRA SECTION 313 GRAVITY-BASED PENALTY CALCULATION WORKSHEET

Respondent: Catalina Yachts, Inc. Address: 21200 Victory Blvd Westland Hills, CA 91364

Inspector: Bill Dickey Inspection Notice Date: None Inspection Date: 11/15/93

No. of Employees: 225 Gross Sales: \$ \$40,000,000 SIC Code: 3732

Case Developer: Pam Tsai Date: 6/8/94

Counts	Chemical Name	Quantity Manufactured/ Processed/Used (Year)	Threshold Quantity	Circumstance Level	Extent Level	\$ Penalty
I	Acetone <i>87-64-1</i>	308,168 (1988) <i>used</i>	10,000	1	A	\$25,000
II	Acetone	101,655 (1989) <i>used</i>	10,000	1	A	\$25,000
III	Styrene	1,784,078 (1988) <i>processed</i>	50,000	1	A	\$25,000
IV	Styrene <i>100-42-5</i>	2,691,348 (1989) "	25,000	1	A	\$25,000
V	Styrene	898,416 (1990) "	"	1	A	\$25,000
VI	Styrene	624,441 (1991) "	"	1	A	\$25,000
VII	Styrene	660,798 (1992) "	"	1	A	\$25,000
VIII						
IX						
X						
XI						
XII						
XIII						
XIV						
TOTAL						

23

EPCRA Targeting System

File: 11/10/93

Facility Detail Report

Page: 10

Fac Name: 91300a List Description: selected from 91300 to 91399 with >50emp List Date: 11/10/93
#####

End of Facility JAFRA COSMETICS INC

Facility Name: CATALINA YACHTS INC	EPA ID: CA0053873071	Primary SIC: 3732
Street Address: 21200 VICTORY BLVD	DBR #: 53873071	Secondary SIC:
City, State ZIP: WOODLAND HILLS, CA 91364	County: LOS ANGELES	NSA: 4480
Sales Volume: \$40,000,000	Employees: 275	
Contact Name: FRANK W BUTLER	Latitude: 34° 10' 06"	TRI Dates 1991: / /
Contact Title: PRESIDENT	Longitude: 118° 36' 06"	1990: / /
Mailing Address: P O BOX 989		1989: / /
WOODLAND HILLS, CA 91365-0989		
Phone Number: 818-864-7700		
Parent Name:	Parent DBR #:	

End of Facility CATALINA YACHTS INC

Ex 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 28 1996

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

CERTIFIED STATEMENT

I, Linda A. Travers, am the Director of the Information Management Division. The Information Management Division of the Office of Pollution Prevention and Toxics is responsible for the receipt and review of EPA Forms 9350-1 submitted pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act. I certify that the facility referenced below submitted to the EPA Form(s) 9350-1 identified by the assigned Document Control Number(s), chemical name(s), and CAS No(s) as of the date(s) specified for the 1989 through 1994 calendar years.

FACILITY NAME: Catalina Yachts/Morgan Division

FACILITY ADDRESS: 7200 Bryan Dairy Road
Largo, FL 34647-1504

<u>DOCUMENT CONTROL</u> <u>NUMBER</u>	<u>CHEMICAL NAME</u>	<u>CAS NO.</u>	<u>DATES PSTMKD/</u> <u>RECEIVED</u>
13-89-03510287-0-FL	Acetone	000067-64-1	06/13/90
13-90-04576612-2-FL	Acetone	000067-64-1	11/07/91
13-91-05545712-9-FL	Acetone	000067-64-1	08/12/92
13-89-03510288-2-FL	Styrene	000100-42-5	06/13/90
13-90-04576226-3-FL	Styrene	000100-42-5	11/07/91*
13-91-05545711-7-FL	Styrene	000100-42-5	08/12/92
13-92-06501320-7-FL	Styrene	000100-42-5	04/27/93
13-93-07549427-2-FL	Styrene	000100-42-5	05/17/94*
13-94-08012919-0-FL	Styrene	000100-42-5	06/28/95

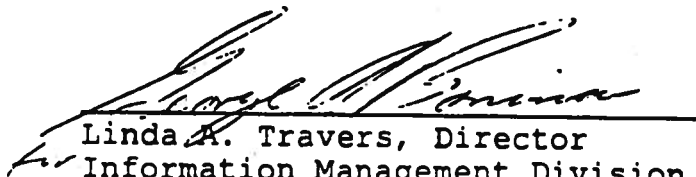
Ex 5

13-93-07546514-4-FL
13-94-08012920-2-FL

Toluene
Toluene

000108-88-3 05/17/94*
000108-88-3 06/28/95

*These are revised submissions. . The originals are also attached.


Linda A. Travers, Director
Information Management Division

6/28/96
Date